Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Strengthening the NPT against withdrawal and non-compliance

Suggestions for the establishment of procedures and mechanisms

Working paper submitted by Germany

At the Second Prepcom of the NPT Review process 2005 Germany introduced ideas on procedures and mechanisms which could strengthen the NPT against withdrawal and non-compliance. This working paper elaborates these ideas with a view to stimulating further discussion on them.

1. Structuring Withdrawal Procedures

The NPT is the most universal multilateral treaty. It is of paramount importance to maintain its authority. In order to do so every effort should be undertaken to prevent state parties from withdrawing from the NPT and subsequently becoming de-facto nuclear weapon states. The Review Conference could look for an agreement on the rules and procedures to be observed in case that a state has the intention to withdraw from the NPT. Such an agreement should in no way limit or exclude the right of states to withdraw from the Treaty as enshrined in Art.X of the NPT, but it would set out in advance the necessary steps and procedures which should be observed in such a case.

The following ideas might be further explored:

- Establishing a requirement for a state contemplating to withdraw from the NPT to submit to all NPT-Partners prior to the notification of withdrawal in accordance with Art X a written information setting out the concerns that have led it to contemplate withdrawing from the Treaty.

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- Establishing a requirement for a state contemplating to withdraw from the NPT to conduct prior consultations with NPT-state parties before exercising its right in accordance with Art. X. The information provided by that state would provide the point of departure for these consultations. The consultations could take place in the context of an extraordinary conference of the NPT to be convened immediately after a state has declared its intention to withdraw and has informed about the reasons for its intention as set out above. The consultations should provide an opportunity for exploring possible ways and means to prevent a withdrawal including measures to be adopted in the NPT context which would satisfy the stated security needs of the party which intends to withdraw.

- Examining the possibility to develop a list of criteria relating to the definition of the "extraordinary event, related to the subject matter of this Treaty". Such a list of criteria might also be helpful for conducting the consultation process suggested above.

- Determining that the right of withdrawal cannot be exercised in cases where the state in question is or is alleged to be (with relevant investigations/procedures underway) in non-compliance with the NPT.

2. Structuring the communication between NPT members

The NPT does not contain any provisions regarding procedures to be followed in cases of non-compliance. Thus when for example the grave allegations regarding non-compliance by the DPRK arose in October 2002, the community of NPT-state parties as such had no direct way of communicating or co-ordinating its views.

It might therefore be worth examining whether the Review Conference would be able to remedy the situation by establishing communication rules and procedures in cases of serious non-compliance. Possible Mechanisms to be established in the NPT framework should however in no way detract from the role and obligations of the IAEA in this regard.

The following suggestions might be examined by the Review Conference:

- Establishment of a formal point of contact system similar to the ones that were established for other Treaties and agreements (for example ICC of HCoC). A point of contact could also be used to strengthen the interactivity of the Review Process in providing a forum for questions and answers between the regular Prepcom Meetings and the Review conferences themselves

- Establishment of procedures for extraordinary conferences of the NPT-state parties to be convened in cases of serious violations of the NPT. While the criteria for an extraordinary conference in a case of withdrawal can be clearly defined, a conference in reaction of serious violations of the NPT has to be subject to a quorum to be decided. Such a conference would provide high-profile opportunities to discuss specific non-compliance cases.

3. Structuring the reaction to a withdrawal

In cases where a withdrawal of a state from the NPT can ultimately not be avoided, the international community has to look for ways to reduce the possibilities of such a state, to benefit further from the technology and the know-how it has acquired under Art.IV of the NPT during its membership. This might indeed be very difficult to put into practice once a withdrawal has taken place. Thus the Review Conference could

- reaffirm the understanding of the NPT member states, that membership of and full compliance with the NPT represents a key requirement of the international community in order to participate in the development of the applications of nuclear energy for peaceful purposes.

- call on supplier countries to include in their delivery agreements the provision that the items delivered should remain under IAEA safeguards if the recipient state withdraws from the NPT.

- underline the understanding, that nuclear equipment, technology and know-how obtained as a member state of the NPT in accordance with article IV of the NPT, remains also in case of a withdrawal from the NPT by a state restricted to peaceful uses only and in consequence has to remain subject to IAEA-safeguards.

- consider in addition the possibility to establish a right for supplier countries or the IAEA to ask a state for the immediate restitution of material and technology delivered under Art.IV of the NPT in case that the state withdraws from the NPT. There could also be a provision allowing for the shut down of relevant capacities/facilities to be required. No state withdrawing from the NPT should have the right to benefit from the capacities and technological knowledge that it has established in the nuclear field as a result of having made use of Art.IV of the Treaty and/or having benefited from the assistance and cooperation provided under the Treaty by the IAEA or other State parties.

- reaffirm that in accordance with international law a state withdrawing from the NPT is still accountable for breaches or acts of non-compliance committed while still being a party to the NPT. Thus the state will continue to be subject to decisions of the relevant international institutions such as the IAEA and the UNSC.